

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

REALTIME DATA LLC d/b/a IXO,
Plaintiff,

v.

ACTIAN CORPORATION et al.,
Defendants.

Case No. 6:15-cv-463-RWS-JDL

LEAD CASE

JURY TRIAL DEMANDED

REALTIME DATA LLC d/b/a IXO,
Plaintiff,

v.

RIVERBED TECHNOLOGY, INC. et al.,
Defendants.

Case No. 6:15-cv-468-RWS-JDL

MEMBER CASE

JURY TRIAL DEMANDED

**REALTIME DATA LLC d/b/a IXO'S ANSWER TO
RIVERBED TECHNOLOGY, INC.'S COUNTERCLAIMS**

Plaintiff-Counterdefendant, Realtime Data LLC d/b/a IXO ("Realtime") answers Counterclaims for Declaratory Judgment of Noninfringement and Invalidity of U.S. Patent Nos. 7,378,992 ("the '992 Patent"); 7,415,530 ("the '530 Patent"); 8,643,513 ("the '513 Patent"); and 9,116,908 ("the '908 Patent"), collectively (the "Asserted Patents" or "Patents-in-Suit") of Defendant-Counterclaimant Riverbed Technology, Inc. ("Riverbed" or "Defendant") as follows:

THE PARTIES

1. Admitted.
2. Admitted.

JURISDICTION AND VENUE

3. Admitted.

4. Admitted.

5. Realtime admits that Defendant denies Realtime's allegations of infringement of the Patents-in-Suit. Otherwise, Realtime admits the statements in paragraph 5.

6. Admitted.

7. Admitted.

8. Admitted.

**FIRST COUNTERCLAIM: DECLARATORY JUDGMENT OF NON-
INFRINGEMENT OF THE '992 PATENT**

9. Realtime incorporates by reference its responses to Paragraphs 1-8 of this Answer to Defendant's Counterclaims as if fully set forth herein.

10. Realtime admits that Defendant denies Realtime's allegations of infringement of the '992 patent. Otherwise, Realtime denies the allegations in paragraph 10.

11. Realtime admits that Defendant has requested a declaration of non-infringement of any valid claim of the '992 Patent. Otherwise, Realtime denies the allegations in paragraph 11.

**SECOND COUNTERCLAIM: DECLARATORY JUDGMENT OF NON-
INFRINGEMENT OF THE '530 PATENT**

12. Realtime incorporates by reference its responses to Paragraphs 1-11 of this Answer to Defendant's Counterclaims as if fully set forth herein.

13. Realtime admits that Defendant denies Realtime's allegations of infringement of the '530 patent. Otherwise, Realtime denies the allegations in paragraph 13.

14. Realtime admits that Defendant has requested a declaration of non-infringement of any valid claim of the '530 Patent. Otherwise, Realtime denies the allegations in paragraph 14.

**THIRD COUNTERCLAIM: DECLARATORY JUDGMENT OF NON-
INFRINGEMENT OF THE '513 PATENT**

15. Realtime incorporates by reference its responses to Paragraphs 1-14 of this Answer to Defendant's Counterclaims as if fully set forth herein.

16. Realtime admits that Defendant denies Realtime's allegations of infringement of the '513 patent. Otherwise, Realtime denies the allegations in paragraph 16.

17. Realtime admits that Defendant has requested a declaration of non-infringement of any valid claim of the '513 Patent. Otherwise, Realtime denies the allegations in paragraph 17.

**FOURTH COUNTERCLAIM: DECLARATORY JUDGMENT OF NON-
INFRINGEMENT OF THE '908 PATENT**

18. Realtime incorporates by reference its responses to Paragraphs 1-17 of this Answer to Defendant's Counterclaims as if fully set forth herein.

19. Realtime admits that Defendant denies Realtime's allegations of infringement of the '908 patent. Otherwise, Realtime denies the allegations in paragraph 19.

20. Realtime admits that Defendant has requested a declaration of non-infringement of any valid claim of the '908 Patent. Otherwise, Realtime denies the allegations in paragraph 20.

**FIFTH COUNTERCLAIM: DECLARATORY JUDGMENT OF INVALIDITY
OF THE '992 PATENT**

21. Realtime incorporates by reference its responses to Paragraphs 1-20 of this Answer to Defendant's Counterclaims as if fully set forth herein.

22. Realtime admits that Defendant contends that the claims of the '992 patent are invalid. Otherwise, Realtime denies the allegations in paragraph 22.

23. Realtime admits that Defendant has requested a declaration of invalidity of the '992 Patent. Otherwise, Realtime denies the allegations in paragraph 23.

**SIXTH COUNTERCLAIM: DECLARATORY JUDGMENT OF INVALIDITY
OF THE '530 PATENT**

24. Realtime incorporates by reference its responses to Paragraphs 1-23 of this Answer to Defendant's Counterclaims as if fully set forth herein.

25. Realtime admits that Defendant contends that the claims of the '530 patent are invalid. Otherwise, Realtime denies the allegations in paragraph 25.

26. Realtime admits that Defendant has requested a declaration of invalidity of the '530 Patent. Otherwise, Realtime denies the allegations in paragraph 26.

**SEVENTH COUNTERCLAIM: DECLARATORY JUDGMENT OF INVALIDITY
OF THE '513 PATENT**

27. Realtime incorporates by reference its responses to Paragraphs 1-26 of this Answer to Defendant's Counterclaims as if fully set forth herein.

28. Realtime admits that Defendant contends that the claims of the '513 patent are invalid. Otherwise, Realtime denies the allegations in paragraph 28.

29. Realtime admits that Defendant has requested a declaration of invalidity of the '513 Patent. Otherwise, Realtime denies the allegations in paragraph 29.

**EIGHTH COUNTERCLAIM: DECLARATORY JUDGMENT OF INVALIDITY
OF THE '908 PATENT**

30. Realtime incorporates by reference its responses to Paragraphs 1-29 of this Answer to Defendant's Counterclaims as if fully set forth herein.

31. Realtime admits that Defendant contends that the claims of the '908 patent are invalid. Otherwise, Realtime denies the allegations in paragraph 31.

32. Realtime admits that Defendant has requested a declaration of invalidity of the

‘908 Patent. Otherwise, Realtime denies the allegations in paragraph 32.

PRAYER FOR RELIEF

In response to Defendant’s Prayer for Relief, Realtime denies that Defendant is entitled to any relief, and in particular to any of the relief requested in paragraphs (a)-(f) of Defendant’s Prayer for Relief, and further requests that the Court enter such preliminary and final orders and judgments as are necessary to provide Realtime with the following requested relief:

- a. A Judgment in favor of Realtime on Defendant’s Counterclaims that the Asserted Patents are not invalid and are enforceable, and that Defendant infringes the ‘992 patent, the ‘530 patent, the ‘513 patent and the ‘908 patent;
- b. An Order dismissing Defendant’s Counterclaims in their entirety with prejudice;
- c. A judgment in favor of Plaintiff that Defendant has infringed, either literally and/or under the doctrine of equivalents, the ‘992 patent, the ‘530 patent, the ‘513 patent and the ‘908 patent;
- d. A permanent injunction prohibiting Defendant from further acts of infringement of the ‘992 patent, the ‘530 patent, the ‘513 patent and the ‘908 patent;
- e. A judgment and order requiring Defendant to pay Plaintiff its damages, costs, expenses, and prejudgment and post-judgment interest for its infringement of the ‘992 patent, the ‘530 patent, the ‘513 patent and the ‘908 patent, as provided under 35 U.S.C. § 284;
- f. A judgment and order requiring Defendant to provide an accounting and to pay supplemental damages to Realtime, including without limitation, prejudgment and post-judgment interest;
- g. A judgment and order finding that this is an exceptional case within the meaning of 35 U.S.C. § 285 and awarding to Plaintiff its reasonable attorneys’ fees against Defendant; and

h. Any and all other relief as the Court may deem appropriate and just under the circumstances.

DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure and Local Rule CV-38, Plaintiff demands a trial by jury of all issues so triable.

Dated: March 7, 2016

Respectfully Submitted,

By: /s/ Marc A. Fenster by permission Claire

Abernathy Henry

Marc A. Fenster (CA SBN 181067)

LEAD ATTORNEY

Reza Mirzaie (CA SBN 246953)

Brian D. Ledahl (CA SBN 186579)

Jeffrey Z.Y. Liao (CA SBN 288994)

C. Jay Chung (CA SBN 252794)

RUSS AUGUST & KABAT

12424 Wilshire Boulevard, 12th Floor

Los Angeles, CA 90025

(310) 826-7474

mfenster@raklaw.com

rmirzaie@raklaw.com

bledahl@raklaw.com

jliao@raklaw.com

jchung@raklaw.com

T. John Ward, Jr.

Texas State Bar No. 00794818

E-mail: jw@wsfirm.com

Claire Abernathy Henry

Texas State Bar No. 24053063

E-mail: claire@wsfirm.com

WARD, SMITH & HILL, PLLC

1127 Judson Road, Ste 220

Longview, Texas 75601

(903) 757-6400 (telephone)

(903) 757-2323 (facsimile)

*Attorneys for Plaintiff
Realtime Data LLC d/b/a IXO*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was filed electronically in compliance with Local Rule CV-5(a). Therefore, this document was served on all counsel who are deemed to have consented to electronic service. Local Rule CV-5(a)(3)(A). Pursuant to Fed. R. Civ. P. 5(d) and Local Rule CV-5(d) and (e), all other counsel of record not deemed to have consented to electronic service were served with a true and correct copy of the foregoing by email on this 7th day of March, 2016.

/s/ Claire Abernathy Henry
Claire Abernathy Henry